



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Marshfield Realty Partners Limited Partnership
File: B-227863
Date: August 14, 1987

DIGEST

Contracting agency has the authority to decide when the negotiation and offer stage of a procurement will end. Therefore, where the agency decides to cancel the solicitation after receipt of best and final offers because no technically acceptable proposals were received, the agency could reasonably disregard subsequent submissions from an offeror that were intended to cure its defective proposal after the determination to cancel had been made by the agency.

DECISION

Marshfield Realty Partners Limited Partnership protests the rejection of its proposal as technically unacceptable and the subsequent cancellation of solicitation for offers (SFO) No. 90-87-16, issued by the Bureau of the Census for the lease of office space in Southfield, Michigan. Marshfield contends that its proposal was fully acceptable under the terms of the SFO, that its best and final offer (BAFO) provided the lowest reasonable price to the agency, and that the subsequent cancellation was improper and without justification because the agency's needs had not changed.

The record shows that the SFO, issued on March 17, 1987, required the office space to be contiguous and to be located on not more than two floors of a building. Further, the SFO required that the agency's storage areas (approximately 25 percent of the total area to be leased) have a minimum live floor load capacity of 100 pounds per square foot; the SFO stated that written certification of the floor load capacity, by a registered professional engineer, may be required. The Bureau states that it requires this live floor load capacity because it needs to store pallets of computer paper weighing 1,500 pounds.

After Marshfield's initial proposal, submitted on March 27, 1987, failed to indicate the live load capacity of its floors, the record shows that the government, at a meeting on April 30, 1987, specifically told Marshfield to submit in its BAFO information concerning the floor load capacity of

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the offered premises. On May 22, 1987, the due date for BAFOs, Marshfield again submitted a proposal that did not contain any indication of floor load capacity. On May 28, 1987, a government representative requested "clarification" of Marshfield's BAFO in another attempt to obtain the missing information concerning floor load capacity. In this conversation, according to the agency, the government representative specifically requested written certification of the floor load capacity by a registered professional engineer by May 29, 1987. On May 29, the agency received a letter from a Marshfield representative (not a professional engineer) who stated that the firm "was prepared to meet this and all other requirements." On this same day, May 29, the Bureau decided to cancel the solicitation and resolicit because Marshfield's proposal was still unacceptable and all other proposals were also technically unacceptable.

Subsequently, and after the agency had made its determination to cancel the solicitation, the agency received two letters from Marshfield on June 1 and 2, 1987, including a letter from a professional engineer in which the engineer stated that the lower level of Marshfield's building (which was not offered under the SFO) and other areas not relevant here could safely support 100 pounds per square foot. The engineer further stated that reinforcement of steel framing would be possible in other areas of the building to achieve the required floor load capacity. The Bureau still did not consider this to be a proper certification. On June 3, the Bureau published an advertisement for the proposed lease (resolicitation) in the local newspaper. This protest followed.

Marshfield argues that its BAFO, like its initial offer, contemplated some construction on the proposed premises since the SFO itself contemplated alteration of offered space to meet certain specifications, layout and design requirements. Because the SFO did not identify the location of the storage area, Marshfield argues that compliance with the floor load requirement could be satisfied by a "commitment to achieve the . . . live load capacity in the storage area [through alterations]." Marshfield further states that the government representative, when requesting the floor load certification on May 28, did not state that the certification had to be provided by May 29, 1987. Marshfield notes that it followed up this request with three separate letters which were received by the agency on May 29, June 1, and June 2, 1987. Marshfield states that when a contracting officer requests clarification, the offeror must be permitted a reasonable amount of time in which to respond. Marshfield, further states that its responses were fully adequate and its proposal fully acceptable.

We need not decide whether the engineer certificate submitted by Marshfield on June 2 cured the defect in Marshfield's proposal. Initially, we accept the Bureau's statements that the government representative, on May 28, specifically requested that Marshfield submit a written certification of its floor load capacity by May 29, 1987. See A.J. Fowler Corp., B-224156, Jan. 8, 1987, 87-1 CPD ¶ 33 (where the only evidence on a factual matter is the protester's statements which conflict with the agency's report, the protester has not met its burden of proof). Marshfield did not do so and on that same day the agency decided to cancel the solicitation and reject all proposals. At this point, on May 29, 1987, since the live floor load capacity was a mandatory requirement representing the essential minimum needs of the agency, we think that Marshfield's failure to provide floor load data as repeatedly requested by the agency left its proposal technically unacceptable. Cf. Falcon Systems, Inc., B-214562, Sept. 10, 1984, 84-2 CPD ¶ 270.

Further, we have held that it is up to the contracting agency to decide when the negotiation and offer stage of a procurement will end so that a firm has no legal right to insist that negotiations be reopened after BAFOs are submitted. Crown Point Coachworks and R&D Composite Structures, et al., B-208694 et al., Sept. 29, 1983, 83-2 CPD ¶ 386. Therefore, since all proposals were technically unacceptable on May 29, after BAFOs and after the "clarification," we think that the agency at that point reasonably ended the negotiation stage of the procurement by its determination to cancel the solicitation. Moreover, we think the agency could reasonably disregard subsequent submissions by Marshfield because the agency generally has no duty to continue negotiations after best and final offers. See Crown Point Coachworks and R&D Composite Structures, et al., B-208694 et al., supra. In short, since all proposals were determined to be technically unacceptable, the solicitation was properly canceled, Cf. Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1(c)(6) (1986), and contrary to the protester's assertions, the resolicitation does not constitute an auction. Cf. Stacor Corp., et al., 57 Comp. Gen. 234 (1978), 78-1 CPD ¶ 68.

The protest is denied.

for *Seymour Sfor*
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